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# Appeal Decision

Site visit made on 26 February 2013

**by David Hogger BA MSc MRTPI MCIHT**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 5 March 2013**

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**Appeal Ref: APP/Q1445/A/12/2180864**  
**150 Ladies Mile Road, Brighton BN1 8TE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr R Holness against the decision of Brighton & Hove City Council.
  - The application Ref BH2011/02845, dated 22 September 2011, was refused by notice dated 2 April 2012.
  - The development proposed is a detached dwelling.
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## Decision

1. The appeal is allowed and planning permission is granted for a detached dwelling at 150 Ladies Mile Road, Brighton BN1 8TE in accordance with the terms of the application, Ref BH2011/02845, dated 22 September 2011, subject to the conditions in the attached schedule.

## Application for Costs

2. An application for costs was made by Mr R Holness against Brighton and Hove City Council. This application is the subject of a separate decision.

## Preliminary Matters

3. The Council did not submit an Appeal Statement and therefore its case rests primarily on my interpretation of the reason for refusal.
4. It was agreed between the parties, at the site visit, that the plan entitled Streetscene Details, dated August 2011, is part of the planning application and I have determined the appeal on that basis.

## Main Issue

5. The main issue is the effect of the proposed dwelling on the living conditions of neighbours, particularly in terms of loss of sunlight and daylight, outlook and loss of privacy.

## Reasons

6. The proposed dwelling would sit on land currently occupied by the garage to No 150 Ladies Mile Road. To one side would be the host property, which is a bungalow and to the other side would be a two storey dwelling (No 152).
7. I saw the site from both the host property and from No 152 and noted the relationship between the proposed development and other nearby dwellings,

including those in Ladies Mile Road, Portfield Avenue, Tangmere Road and Windmill View.

### ***Sunlight and Daylight***

8. There are two windows and a glazed door in the side elevation of No 152 but they are not main windows to habitable rooms and although there would be a loss of light through these apertures I do not consider that the proposed development would cause oppressive or claustrophobic conditions for the occupiers because they are not the main sources of natural light in the house. Reference is made by the neighbour's Right of Light Consultant to the lack of Average Daylight Factor (ADF) and No Sky Line (NSL) tests. However, the Consultant did not submit any substantive evidence in this regard and therefore I can only give the assertion that the results of any such tests would have found that there would be a significant reduction in daylight, little weight.
9. Concern was raised regarding the overshadowing of properties on the opposite side of the road but I consider that the distances involved would mean that any loss of light to these properties would not be significant.
10. There are windows in the adjacent side elevation of the host property but the bedroom to the front has windows in two other elevations and the effect of the proposed dwelling in terms of light levels in the study, kitchen and conservatory would not be so significant as to justify dismissing this appeal.

### ***Outlook***

11. The proposed dwelling would extend beyond the rear elevation of No 152 but because that distance would be relatively short the proposed house would not appear unduly overbearing from either inside or from the back garden of No 152. In terms of the host property the proposed dwelling would not be significantly detrimental in terms of outlook from the main habitable rooms or from the back garden.

### ***Privacy***

12. Although loss of privacy is not referred to in the reason for refusal, concern has been voiced by neighbours about overlooking from the proposed Juliet balcony, which would be in a study located in the roof. The balcony would be virtually flush with the rear elevation and would have doors that open inwards. I consider that such a feature would not result in a significant loss of privacy because similar views could be obtained from other windows and it is inevitable that in an urban environment such as this there will be a degree of overlooking from upper floors. I have therefore given this matter only little weight.

### ***Conclusion on Main Issue***

13. On the main issue I conclude that the proposed dwelling would not significantly harm the living conditions of neighbours. The requirements of saved policies QD1, QD2 and QD27 of the Brighton and Hove Local Plan, which seek to secure a high standard of design and protect the amenity of residents, would be met.

### ***Other Matters and Overall Conclusion***

14. The neighbour has raised the issue of noise, primarily as a result of the entrance to the proposed dwelling being on the side elevation next to No 152. However, there is no reason to suppose that the occupiers of the proposed

dwelling would be unduly noisy and although there are bedrooms to this side of No 152 I saw that their main windows are not to the side.

15. With regard to the entrance being to the side of the proposed dwelling (I saw that there was an example of such an arrangement nearby) it is suggested that this is an indication that the proposed dwelling would appear cramped on its plot. Although the proposed plot width would be slightly narrower than those nearby, the appearance of the proposed house would reflect the style, design and height of the two storey dwellings to the north-east and it would fit comfortably within the street scene.
16. Local residents have voiced concerns regarding highway safety. At the time of my visit traffic levels were low and there was ample on-street parking available. Whilst I am sure that the situation may be different at week-ends and in the evening, no substantive evidence was submitted to demonstrate that the provision of one additional house would significantly exacerbate the situation and I note that the Council raised no concerns in this regard.
17. Reference is made by the neighbour to the issue of land ownership but this is not a matter that is before me for consideration in the determination of this appeal.
18. For the reasons given above and having considered all other matters raised, I conclude that there are none which outweigh my findings on the main issue and that the appeal should be allowed.

### **Conditions**

19. The Council has suggested 12 conditions which I have assessed against the advice in Circular 11/95: The Use of Conditions in Planning Permissions. They include the standard time condition which I impose and a condition requiring the development to be undertaken in accordance with the approved plans which I impose for the avoidance of doubt.
20. Suggested conditions 3, 5, 8, 10, 11 and 12 relate to issues of design, boundary treatments and recycling and cycle parking facilities. These are necessary in the interests of sustainable development, the appearance of the proposed development and to ensure that the needs of people with disabilities would be met and I impose them accordingly, albeit with some clarification.
21. Suggested condition 4 would prevent the enlargement or alteration of the proposed dwelling without planning permission and suggested condition 7 would require obscure glazing in the side windows in the north elevation (as described on the Proposed Elevations plan). Suggested condition 6 would require work on the site to stop if contamination is found on the site. I impose these conditions because they are necessary to protect the living conditions of neighbours.
22. The submission of a programme of archaeological investigation is required by suggested condition 9 and I impose this, in clarified form, because of the site's location on the edge of an archaeological notification area.

*David Hogger*

Inspector

## **Schedule of Conditions (12)**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: un-numbered Proposed Details, Proposed Floor Plans, Proposed Site Layout and Proposed Elevations (received on 15 December 2011); un-numbered Side Elevation received on 23 November 2011; and the Existing Site Plan and Location Plan received on 22 September 2011 and Streetscene Details dated August 2011.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no extension, enlargement or other alteration of the dwelling hereby approved shall be erected without planning permission.
- 5) Unless otherwise agreed in writing by the Local Planning Authority, the dwelling hereby permitted shall be constructed to Lifetime Homes standards and shall be retained as such thereafter.
- 6) If during development contamination is found to be present on the site, then, unless otherwise agreed in writing by the Local Planning Authority, no further development shall be carried out until the developer has submitted to and had approved in writing by the Local Planning Authority a method statement identifying, assessing and addressing the contaminants. The subsequent development shall be carried out in accordance with the approved method statement.
- 7) Before the first occupation of the building hereby permitted the windows on the north elevation of the development hereby permitted shall be fitted with obscured glass and be non-opening, unless that part of the window that can be opened is more than 1.7m above the floor level, and they shall be permanently retained as such.
- 8) Unless otherwise agreed in writing by the Local Planning Authority, no development shall commence until:
  - (a) evidence that the development is registered with an accreditation body under the Code for Sustainable Homes and a Design Stage / Interim Report showing that the development will achieve Code level 4 has been submitted to and approved in writing by the Local Planning Authority;
  - and

- (b) a Design Stage / Interim Code for Sustainable Homes Certificate demonstrating that the development will achieve Code level 4 has been submitted to and approved in writing by the Local Planning Authority. A completed pre-assessment estimator will not be acceptable.
- 9) No development shall take place until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
- 10) No development shall take place until full details of the boundary treatments have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 11) Unless otherwise agreed by the Local Planning Authority, the dwelling hereby approved shall not be occupied until a Building Research Establishment issued Final Code Certificate confirming that the dwelling has achieved a Code for Sustainable Homes rating of Code level 4, has been submitted to and approved in writing by the Local Planning Authority.
- 12) The dwelling hereby approved shall not be occupied until details of refuse and recycling facilities and the cycle store have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and the facilities and store shall be thereafter retained for their respective uses.

